IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 34 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH-TAX

Versus

SHAHIKNAT J. VAKHAARIA

Appearance:

1. WEALTH TAX REFERENCE No. 34 of 1989

MR BB NAIK for Petitioner No. 1

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1979-80:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to the exemption under section 5 (1)(iv) of the Act?"

2. We have heard Mr BB Naik learned counsel for the revenue. Of course notice of the respondent - assessee is not received back. However, in view of the decision that we propose to render, it is not necessary to await service of notice on the respondent - assessee.

3. The assessee had claimed deduction of Rs.1,00,000/- under section 5 (1)(iv) in respect of the house property owned by a firm, in which he was a partner. The W.T.O. rejected the claim on the ground that the interest of a partner in a firm is movable property irrespective of the fact that the firm in which he is partner owns immovable property. The AAC granted the exemption on the basis of his predecessor's order for the immediately preceding year in this assessee's case. the Tribunal consistently with its order in WTA Nos.436 & 437/Ahd/84 held that the assessee was entitled to the exemption.

4. At the hearing of this reference, our attention is invited to the decision of this Court in Commissioner of Wealth-tax vs. Maheshkumar R Patel (1995) 216 ITR 272. In the said case, the question was about exclusion of two assets, namely, the bank deposit under section 5(1)(xxvi) and house property under section 5(1)(iv) for computing the value of the assessee's interest in the partnership firm for the purpose of computing the net wealth of the assessee, taxable under the Wealth-tax Act. This Court examined the scheme of the Wealth-tax Act and held that there is no warrant for treating the property of the individual on the one hand and the property under the joint ownership as partnership firm on the other hand for the purpose of computing the net wealth under the Act differently. The Court held that the Tribunal in that case was right in allowing the claim of the assessee for exclusion of the two assets including the house under section 5(1)(iv) of the Act.

5. Following the aforesaid decision, we are also of the view that in the facts of the instant case also, the Tribunal was right in law in holding that the assessee was entitled to exemtpion under section 5(1)(iv) of the

Act.

We, accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-